

SJ 7 Workgroup - Meeting #4
April 9th and 10th, 2008

Option 1 – Full Fingerprint Background Check
Administrative and Process Discussion Items

Effective Date of Criminal Background Check Process – July 1, 2010

- January 2009-April 2009 – Legislative process to pass a bill
- April 2009 – June 2010 – Create infrastructure, rules, MOU, forms, data systems, staffing to implement program
- July 1, 2010 – Implement program requirements

Grandfathering Employees of record

- Effective date of the program – employees in covered service settings will be grandfathered and will not be required to have a criminal background check. A background check will be required on those employees if they change employers after the effective date of the new law. (Allows for a phased in approach)

Required background check will be Fingerprints

- Process for submitting fingerprints defined by DOJ requirements already in place.
- DOJ and DPHHS to provide training on fingerprint process to include options for obtaining prints and certifying entities to role prints.

Processing of Background Checks

- Conducted by Department of Justice using existing processes.
- Requested background check submitted directly to DOJ using forms process TBD.
- Payment for the background check will be directly to DOJ. Payment arrangements TBD
- Results communicated to DPHHS under DOJ & DPHHS Memorandum of Understanding (MOU)
- DOJ – Destroys the fingerprint card
- DOJ completed initial review process to compare results against the list of disqualifying events.
- DPHHS completes a second review to verify results against list of disqualifying events. The process to apply the results of background check to the Montana list of disqualifying events will require a determination if crime in another state is “reasonably equivalent” to the crime listed under the Montana Statute. This will require legal assistance to review and make this determination. Will possibly require a development of a database to establish the relationships between the various state and federal laws.
- DPHHS maintains a database / registry of the background check (Details TBD)
- DPHHS sends formal letter to employee / employer regarding results indicating the check resulted in a disqualifying event including the evidence of criminal history reportable to the employer, or no reportable history.
- Copy of letter, with unique identifier number, will be retained for reference.
- Applicant of background check provided appeal rights regarding the results.
- DPHHS destroys copy of “rap sheet”

Notification

- Provided by letter to the applicant and copy provided to employer of record at the time background check requested.
- Possible secured website to provide results to applicant, prospective employers.

Length of time between checks – Frequency of checks

- Criminal background checks will be valid for a period of three (3) years.
- DPHHS will conduct internal verification and certification of the background check via direct inquiry through the Criminal Justice Information Network (CJIN).

- Fingerprint verification and certification will be required if the applicant was absent from the State for a period of time or the CJIN inquiry noted above indicates criminal history after the date of the most recent fingerprint check.
- Applicant letter is portable – to new employers, applicant and employers can request verification of previous background check from the registry.

Grace period for employment while background check is conducted

- Based upon the discretion of the employer. The employer may:
 1. Postpone or delay hiring pending the outcome of the criminal background check
 2. Hire under conditional employment (Probationary Period with supervision) pending the results of the background check. Presentation from DOJ indicated timeframe to complete the check is 4-10 days. Recommend production of fingerprint card to the employer or proof of previous background check prior to commencement of employment under probationary period.

Payment of background check

- Cost as identified by DOJ \$29.25 or \$25.25 for volunteer.
- Payment directly to DOJ
- Cost of obtaining fingerprints – Applicant
- Cost of fingerprint check – Applicant or employer (DOJ – Waive fee for financial hardships?)

Administrative costs DPHHS & DOJ.

- DOJ – TBD under existing authority.
- DPHHS – TBD after cost analysis pending direction of workgroup for administrative process.

Administrative Rule Authority

- Provide directed administrative rule authority to DPHHS and/or DOJ to define the timelines, forms, appeals process, and costs for the background checks.

Statutory Authority

- Requirement for the criminal background check in Montana
- Identify the Service settings and definitions who this requirement applies.
- Identify and define the disqualifying events
- Effective dates
- Identify the shared administrative responsibility between DPHHS and DOJ
- Authority for the registry.
- Define the Appeals Process
- Advisory Council / Board or assignment of duties to an existing DPHHS board or council – Ex: Montana Health Coalition, other? This would provide added assurance regarding the development of rules and regulations regarding the administration of the program. Administrative rules for DPHHS are reviewed through the Interim Committee on Children Families Health and Human Services.
- Reporting of the program operations to a legislative interim committee.

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Option 2 – Criminal Background Check required & State prescribes a minimum process of a progressive check.
Administrative and Process Discussion Items
(Process very similar to Option 1)

Effective Date of Criminal Background Check Process – July 1, 2010

- January 2009-April 2009 – Legislative process to pass a bill
- April 2009 – June 2010 – Create infrastructure, rules, MOU, forms, data systems, staffing to implement program
- July 1, 2010 – Implement program requirements

Grandfathering Employees of record

- Effective date of the program – employees in covered service settings will be grandfathered and will not be required to have a criminal background check. A background check will be required on those employees if they change employers after the effective date of the new law. (Allows for a phased in approach)

Required background check process – State prescribes a minimum process of a progressive check that includes name based and Fingerprints.

- Name based checks required to be conducted via the DOJ website or in writing via DOJ. If name based check indicates criminal history then fingerprint check is required.
- Process for submitting fingerprints defined by DOJ requirements already in place.
- DOJ and DPHHS to provide training on DOJ resources for name based checks or fingerprint checks to include options for obtaining prints and certifying entities to role prints.

Processing of Background Checks

- Conducted by Department of Justice using existing processes.
- Requested background check submitted directly to DOJ using forms process TBD.
- Payment for the background check will be directly to DOJ. Payment arrangements TBD
- Fingerprint results communicated to DPHHS under DOJ & DPHHS Memorandum of Understanding (MOU)
- DOJ – Destroys the fingerprint card
- Fingerprint results DOJ complete initial review process to compare results against the list of disqualifying events.
- Fingerprint results DPHHS completes a second review to verify results against list of disqualifying events. The process to apply the results of background check to the Montana list of disqualifying events will require a determination if crime in another state is “reasonably equivalent” to the crime listed under the Montana Statute. This will require legal assistance to review and make this determination. Will possibly require a development of a database to establish the relationships between the various state and federal laws.
- Name based checks conducted by the employer can be communicated to DPHHS with the concurrence of the applicant for inclusion on the registry.
- DPHHS maintains a database / registry of the background check (Details TBD)
- DPHHS sends formal letter to employee / employer regarding results indicating the fingerprint check resulted in a disqualifying event including the evidence of criminal history reportable to the employer, or no reportable history.
- Copy of letter, with unique identifier number, will be retained for reference.
- Applicant of background check provided appeal rights regarding the results.
- DPHHS destroys copy of “rap sheet”

Notification

- Provided by letter to the applicant and copy provided to employer of record at the time background check requested.
- Possible secured website to provide results to applicant, prospective employers.

Length of time between checks – Frequency of checks

- Criminal background checks will be valid for a period of three (3) years.
- DPHHS will conduct internal verification and certification of the background check via direct inquiry through the Criminal Justice Information Network (CJIN).
- Fingerprint verification and certification will be required if the applicant was absent from the State for a period of time or the CJIN inquiry noted above indicates criminal history after the date of the most recent fingerprint check.
- Applicant letter is portable – to new employers, applicant and employers can request verification of previous background check from the registry.

Grace period for employment while background check is conducted

- Based upon the discretion of the employer. The employer may:
 1. Postpone or delay hiring pending the outcome of the criminal background check
 2. Hire under conditional employment (Probationary Period with supervision) pending the results of the background check. Presentation from DOJ indicated timeframe to complete the check is 4-10 days. Recommend production of fingerprint card to the employer or proof of previous background check prior to commencement of employment under probationary period.

Payment of background check

- Cost of name based check as defined by DOJ \$10.00 or \$11.50 if conducted on-line.
- Cost of fingerprint check as identified by DOJ \$29.25 or \$25.25 for volunteer.
- Payment directly to DOJ
- Cost of obtaining fingerprints – Applicant
- Cost of fingerprint check – Applicant or employer (DOJ – Waive fee for financial hardships?)

Administrative costs DPHHS & DOJ.

- DOJ – TBD under existing authority.
- DPHHS – TBD after cost analysis pending direction of workgroup for administrative process.

Administrative Rule Authority

- Provide directed administrative rule authority to DPHHS and/or DOJ to define the timelines, forms, appeals process, and costs for the background checks.

Statutory Authority

- Requirement for the criminal background check in Montana
- Identify the Service settings and definitions who this requirement applies.
- Identify and define the disqualifying events
- Effective dates
- Identify the shared administrative responsibility between DPHHS and DOJ
- Authority for the registry.
- Define the Appeals Process
- Advisory Council / Board or assignment of duties to an existing DPHHS board or council – Ex: Montana Health Coalition, other? This would provide added assurance regarding the development of rules and regulations regarding the administration of the program. Administrative rules for DPHHS are reviewed through the Interim Committee on Children Families Health and Human Services.
- Reporting of the program operations to a legislative interim committee.

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Option 3 – Criminal Background Check required. Employer required policies and procedures
Administrative and Process Discussion Items

Effective Date of Criminal Background Check Process – July 1, 2010

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- April 2009 – June 2010 – Create infrastructure, rules, MOU, forms, data systems, staffing to implement program
- July 1, 2010 – Implement program requirements

Grandfathering Employees of record

- Effective date of the program – employees in covered service settings will be grandfathered and will not be required to have a criminal background check. A background check will be required on those employees if they change employers after the effective date of the new law. (Allows for a phased in approach)

Required background check process – State requires employers to have a criminal background check process that must be contained in policies and procedures.

Processing of Background Checks

- Conducted by the individual employer.
- Employer completes a review to compare results against the list of disqualifying events. Can request departmental review for verification.
- The process to apply the results of background check to the Montana list of disqualifying events will require a determination if crime in another state is “reasonably equivalent” to the crime listed under the Montana Statute. This will require legal assistance to review and make this determination. Will possibly require a development of a database to establish the relationships between the various state and federal laws.
- Negative results of criminal background checks conducted by the employer required to be communicated to DPHHS with the concurrence of the applicant for inclusion on the registry.
- DPHHS maintains a database / registry of the background check (Details TBD). This would be a registry of individuals with disqualifying events that prohibit employment in the service settings as defined by this Act.
- DPHHS sends formal letter to employee / employer regarding results indicating the criminal background check resulted in a disqualifying event and their name will be placed on this registry.
- Applicant of background check provided appeal rights regarding the results and inclusion of name on the registry.
- Registry available on a website to provide resource for prospective employers.

Length of time between checks – Frequency of checks

- Criminal background checks will be required of all employers.

Grace period for employment while background check is conducted

- Based upon the discretion of the employer. The employer may:
 1. Postpone or delay hiring pending the outcome of the criminal background check
 2. Hire under conditional employment (Probationary Period with supervision) pending the results of the background check.

Payment of background check

- Responsibility of the employer.
- Cost of name based check as defined by DOJ \$10.00 or \$11.50 if conducted on-line.

- Cost of fingerprint check as identified by DOJ \$29.25 or \$25.25 for volunteer.
- Payment directly to DOJ
- Cost of obtaining fingerprints – Applicant

Administrative costs DPHHS & DOJ.

- DOJ – TBD under existing authority.
- DPHHS – TBD after cost analysis pending direction of workgroup for administrative process.

Administrative Rule Authority

- Provide directed administrative rule authority to DPHHS and/or DOJ to define the timelines, forms, appeals process, and costs for the background checks.

Statutory Authority

- Requirement for the criminal background check in Montana
- Identify the Service settings and definitions who this requirement applies.
- Identify and define the disqualifying events
- Effective dates
- Identify the shared administrative responsibility between DPHHS and DOJ
- Authority for the registry.
- Define the Appeals Process
- Advisory Council / Board or assignment of duties to an existing DPHHS board or council – Ex: Montana Health Coalition, other? This would provide added assurance regarding the development of rules and regulations regarding the administration of the program. Administrative rules for DPHHS are reviewed through the Interim Committee on Children Families Health and Human Services.
- Reporting of the program operations to a legislative interim committee.